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10/068,714	02/06/2002	Valentin Hierzer	CC-3404	9205

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Woodcock Washburn LLP
46th Floor
One Liberty Place
Philadelphia, PA 19103

EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 06/18/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,714

Applicant(s)

HIERZER, VALENTIN

Examiner

Kenneth Bomberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply..

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,6. 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-22, drawn to a dispensing closure, classified in class 222, subclass 556.
 - II. Claims 23-26, drawn to mold, classified in class 264, subclass 328.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown:

(1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)).

In this case the product as claimed can be made by another and materially different apparatus, such as an apparatus that machines the product from a piece of raw stock.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with Harold H. Fullmer on 09 June 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Claim Objections

3. Claims 1-5 and 11-13 are objected to because of the following informalities:

In Reference to Claim 1

In line 16, there is an error in the recited structural relationship “of the cap”
should be --of the spout--.

In Reference to Claim 2

In line 3, --sidewalls-- should be inserted before “substantially”.

In Reference to Claims 3-5

In lines 1, these claims should depend upon --claim 2-- instead of “claim 1” for proper antecedent basis.

In Reference to Claim 11

In line 3, -- and-- should follow “closure”.

In Reference to Claims 12-13

In line 1, “cover” should refer to --seal--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In Reference to Claim 9

It is unclear what relationship between the spout cover and lid member is being described. It appears that "the lid member" should be --the spout--.

In Reference to Claim 19

It is unclear what relationship is being recited in the last three lines of the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6-15, 17-19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Randall (5,938,087).

In figures 1-3, Randall teaches of a closure (40) with a body (46), orifice (60), spout (80), cap (48), spout cover (84), and hinge (47) according to the claims. With respect to the orifice (60) being elongated, note in column 5, lines 16-25, the taught oval cross-section meets the claim limitations.

In Reference to Claim 6

In column 4, lines 61-66, Randall teaches the lid (48) has a collar (84) with an annular seal bead (86) that sealingly engages an exterior surface of the spout. The sealing

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relation of the sealing bead and the spout would inherently provide an interference fit and the associated deflection while sealing.

In Reference to Claims 11-13

Note bottom seal (124).

In Reference to Claim 18

Note hinge (47) description in column 4, lines 6-13.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (5,938,087) in view of Injection Molding Handbook (Handbook).

Randall teaches of a closure substantially according to claims 3-5, but does not teach the specified relative dimensions prior to cooling and shrinking according to the claims. Handbook teaches that it is well understood that plastic molded parts shrink as they cool causing dimensional changes and warpage. Handbook further teaches that such cooling changes are determined by many factors including the material used, the configuration of the part molded, and the location of material gates in the die (see pages 721-738). Handbook teaches that mold cavity dimensions should be increased to

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compensate for shrinkage taking into account the particular variables of the part molded (page 721, column 2).

It would have been obvious to one having ordinary skill in the art to have included the teaching of Handbook to account for cooling shrinkage in the closure of Randall in order to obtain the final desired dimensions as taught by Handbook. The particulars of the differential dimensions being an engineering design choice based upon the variables of the product as taught by Handbook.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (5,938,087) in view of Degroot et al. (WO 01/96198 A1) and Injection Molding Handbook (Handbook).

Randall teaches a closure substantially according to claim 2, but does not show the opening having a pair of opposing parallel sidewalls and a pair of opposing curved endwalls according to the claim. Randall further teaches the invention encompasses other opening geometries (column 5, lines 16-25). Degroot et al. teaches to provide an opening geometry (52) as claimed in order to permit dispensing as a ribbon (page 9, lines 17-21).

It would have been obvious to one having ordinary skill in the art to have included the opening geometry (52) of Degroot et al. in the closure of Randall in order to permit dispensing as a ribbon as taught by Degroot et al.

With respect to the sidewalls being mutually rectilinear and parallel upon cooling after molding, see the discussion above with respect to the teachings of Handbook.

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11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (5,938,087) in view of Beck (4,793,501).

Randall teaches a closure substantially according to claim 16, but does not show the thumb tab according to the claim. Beck teaches to provide thumb tab (30) as claimed in order to assist in lifting the lid (column 2, lines 33-37).

It would have been obvious to one having ordinary skill in the art to have included the thumb tab (30) of Beck in the closure of Randall in order to permit assist in lifting the lid as taught by Beck.

12. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (5,938,087) in view of Degroot et al. (WO 01/96198 A1).

Randall teaches a closure substantially according to claim 20, but does not show the opening having a pair of opposing parallel sidewalls and a pair of opposing curved endwalls according to the claim. Randall further teaches the invention encompasses other opening geometries (column 5, lines 16-25). Degroot et al. teaches to provide an opening geometry (52) as claimed in order to permit dispensing as a ribbon (page 9, lines 17-21).

It would have been obvious to one having ordinary skill in the art to have included the opening geometry (52) of Degroot et al. in the closure of Randall in order to permit dispensing as a ribbon as taught by Degroot et al.

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13. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randall (5,938,087) in view of Baudin (6,257,431).

Randall teaches a closure substantially according to claim 22, but does not show the placement of the orifice according to the claim. Baudin teaches to provide an opening (4, 104) located as claimed. Such a location closer to the dispensing direction would inherently have the advantage of reducing dripping.


It would have been obvious to one having ordinary skill in the art to have incorporated locating the opening off center to the pouring side of the closure of Baudin in the closure of Randall in order to reduce dripping as would be inherent to the design of Baudin.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art listed on the attached FORM PTO-892 have been included because they show hinged dispensing closures with oblong openings.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is (703) 308-2179. The examiner can normally be reached on Monday-Thursday from 9:30 AM - 7:00 PM. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.


KENNETH BOMBERG
PRIMARY EXAMINER
ART UNIT 3754

K.B.
June 15, 2003